

**TOWN OF ARLINGTON  
MASSACHUSETTS**

**REPORT OF THE  
BOARD OF SELECTMEN**



**TO THE  
ANNUAL TOWN MEETING  
MONDAY, APRIL 25, 2005**

**8:00 P.M.**



**JOHN W. HURD, CHAIRMAN**  
**KATHLEEN KIELY DIAS, VICE-CHAIRMAN**  
**KEVIN F. GREELEY**  
**DIANE M. MAHON**  
**ANNIE LACOURT**

## INTRODUCTION

The Board of Selectmen is pleased to present its report to Town Meeting of its main motions under the following articles. These votes are the result of hearings conducted by the Board at which proponents and opponents of the various articles were heard. The Board knows that the Town Meeting will give fair and serious consideration to all of the important issues raised by the various articles. The Board wishes the Town Meeting well in its deliberations and stands ready to respond to any questions or comments concerning these articles.

### **ARTICLE 3                    APPOINTMENT OF MEASURERS OF WOOD AND BARK**

To choose and appoint all the usual Town Officers not hereinbefore mentioned, in such a manner as the Town may determine, or take any action related thereto.

(Inserted by the Board of Selectmen)

**VOTED:        That John A. FitzMaurice, 17 Lakeview, be and hereby is appointed  
Measurer of Wood and Bark until the next Annual Town Meeting.  
(5-0)**

### **ARTICLE 4                    ELECTION OF ASSISTANT TOWN MODERATOR**

To elect a Town Meeting Member as Assistant Moderator for a term of one year, as provided in Title I, Article 1, Section 11, A, of the Bylaws.

(Inserted at the request of the Town Moderator)

**VOTED:        The Moderator will conduct an election for the position of  
Assistant Moderator which was created by a Bylaw amendment  
last year. The text of the Bylaw is as follows:**

#### **“Section 1.    Assistant Moderator**

- A.       Election. Each year at the Annual Town Meeting, the Town Meeting Members shall elect one of their number to serve as Assistant Moderator for a term of one year, or until his or her successor is elected and qualified.**
- B.       Duties. Whenever the Moderator is unavailable, the Assistant Moderator shall preside at Town Meeting. In addition, the Assistant Moderator shall assist the Moderator in the performance of his or her other duties, as the Moderator may direct.”**

**(5-0)**

**COMMENT:**        This Bylaw was passed by the Town Meeting two years ago at the request of the Town Moderator. The Moderator will conduct an election to fill this position under this Article.

**ARTICLE 17****BYLAW AMENDMENT/OUTSIDE LIGHTING**

To see if the Town will vote to amend the Bylaws so as to regulate the use of outside lighting that adversely affects the quality of life in a neighborhood, determine the fine for violations of same, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 17 of the Warrant.**

**(5-0)**

**COMMENT:** Although the Board is somewhat sympathetic to the proponents of this 10 registered voters article, the Board must nonetheless be heedful of the concerns of the Town's several department heads who have voiced concerns regarding the manner of enforcement of same. Although a few communities have enacted such a bylaw which attempts to limit the intrusiveness of light in residential neighborhoods, the enforcement of such a bylaw is, in the final analysis, a discretionary judgment on the part of the enforcing official and thus unavoidably subjective. Since by definition the relative intrusiveness of any outside lighting would have to be considered in a nighttime setting, the enforcement of a bylaw regulating same would fall to police officers. The Board is of the view that the police already have many other duties which are critical to the maintenance of public safety and therefore such an additional task is unwarranted. In addition, the Board does not sense a groundswell of support from the community and therefore recommends a no action vote.

**ARTICLE 18****BYLAW AMENDMENT/NOISE ABATEMENT**

To see if the Town will vote to amend Article 12 Noise Abatement of Title V of the Bylaws to reduce the time during the day when persons may operate heavy equipment, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 18 of the Warrant.**

**(5-0)**

**COMMENT:** The Board believes with the assent of the supporters of this article that the matter of excessive noise is better dealt with under Article 19.

## **ARTICLE 19**

## **BYLAW AMENDMENT/CONSTRUCTION NOISE**

To see if the Town will vote to amend Article 12 – Noise Abatement of Title V of the Town Bylaws so as to further restrict and regulate noise related to construction or other activities in the Town, or take any action related thereto.

(Inserted at the request of the Noise Abatement Committee)

**VOTED:** That the Town Bylaws be and hereby are amended by deleting in its entirety Article 12 of TITLE V and substituting therefore a new Article 12 as follows:

## **TITLE V**

## **REGULATIONS UPON THE USE OF PRIVATE PROPERTY**

### **Article 12 NOISE ABATEMENT**

#### **Section 1. Definitions.**

Except as may be otherwise specified in this Section, all acoustical terminology used in this Article shall have the meaning stated in American National Standard Acoustical Terminology [ANSI S1.1-1998 (R2004) or as it may be revised.]

For purposes of this Article the following words and phrases shall have the meanings respectively ascribed to them by this Section:

#### ***Construction.***

Any activity requiring a building permit and any and all activity necessary or incidental to the erection, assembling, altering, installing, repair or equipping of buildings, roadways, or utilities, including demolition, land clearing, grading, excavating, and filling and paving.

#### ***DB(A).***

The A-weighted sound level in decibels, as measured by a type I or II sound level meter complying with the provisions of Specifications for Sound Level Meters [(ANSI S1.4-1983 (R2001) with amendment S1.4A-1983 or as it may be revised], American National Standards Institute (ANSI), properly calibrated, and operated on the “A” weighting network, slow setting.

#### ***Demolition.***

Any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

#### ***Emergency.***

An occurrence or set of circumstances requiring immediate action involving

- a. the restoration of public utilities or
- b. the restoration of property to a safe condition following a public calamity or
- c. the protection of persons or property from imminent exposure to danger.

***Emergency work.***

Work which is performed in an effort to alleviate an emergency.

***Emergency Vehicle.***

Any vehicle being operated as part of emergency work.

***Heavy Equipment.***

Commercial or industrial equipment such as motorized earth moving equipment, jack hammers, pavement breakers, pile drivers, trucks for loading and unloading dumpsters, tractor-trailers, and parking lot maintenance equipment.

***Pavement breaker.***

Any hydraulically or pneumatically powered impact device intended to cut or trench pavement, subbase macadam, gravel, concrete, or hard ground.

***Person.***

Any individual, partnership, association, firm, syndicate, company, trust, corporation, department, bureau or agency, or any other entity recognized by law as the subject of rights and duties, including the Town, its agencies and departments and any person, as herein defined, operating under a contractual arrangement or agreement with the Town.

***Pile driver.***

An impact device designed or used for the driving of piles, columns and other supports into soil or other material by means of impact, vibrations, pressure, or other means.

**Section 2. Exceptions.**

The provisions of this Article shall not apply to:

- A. **Emergency Alert.** The emission of sound for the purpose of alerting persons to the existence of an emergency or as otherwise specifically permitted by the provisions of this Article.
- B. **Emergency Work.** The emission of sound in the performance of emergency work.
- C. **Public Speakers.** Public speaking and public assembly activities except those activities otherwise regulated by this Article.
- D. **Activities with Permits.** Events and activities (other than construction work) for which proper permits or licenses have been issued.
- E. **Emergency Vehicles.**

- F. Snow Removal.** The emission of sound for the purpose of clearance or removal of snow.
- G. Explosives.** The emission of sound resulting from the use of explosives when authorized by the Arlington Fire Department in accordance with Board of Fire Prevention Regulations 527 CMR 13 and other relevant regulations and statutes of the Commonwealth of Massachusetts.
- H. Religious Uses.** Devices used in conjunction with places of religious worship.
- I. Town Horn.** The sounding of the Town Horn.

### **Section 3. Daytime-Only Activities.**

The following acts are specifically prohibited.

- A. Prohibited Times.** Operating, or permitting the operation of, any of the following devices or vehicles
  - 1. before 8:00 A.M. on Saturday, Sunday or legal holiday
  - 2. before 7:00 A.M. on all other days, or
  - 3. after 8:00 P.M. on any day,in any zone in the Town:
  - a. Heavy equipment (as defined in Section 1), and
    - b. All electric motors or internal combustion engines, or other construction devices, tools or equipment, used in construction, drilling, demolition, maintenance, or earth moving, including but not limited to bulldozers, backhoes, concrete mixers, dump trucks, pneumatic tools, rollers, scrapers, air compressors, generators, jackhammers, cranes, pavement breakers, pile drivers, rock drills, and chainsaws.
- B. Loudspeakers.** Operating or causing to be operated a public address loudspeaker, whether mobile or stationary, after 9:00 P.M. or before 8:00 A.M.

### **Section 4. Maximum Sound Levels.**

- A. Sound Measurement.** When a sound source is located in public spaces, sound measurements shall be made at, and sound level determination made in relation to, any location lawfully accessible to the public.

When the sound source is located on private property, sound measurements shall be made at the boundary line of such property or as close thereto as is feasible.

- B. Sound Limitations.** No person or persons owning, leasing, or controlling the operation of any source or sources of sound shall permit, either willfully, negligently, or by failure to provide necessary equipment or facilities or to take necessary precautions, the production of sound with a sound level greater than 80 dB (A) before 6 A.M. or after 10 P.M. on any day or greater than 85 dB (A) at any time.

**Section 5. Penalties.**

Any person violating any provision of this Article shall be subject to a fine of \$200.00 for each offense and/or an action in a court of competent jurisdiction, seeking an order to cease and desist from such activity. Each day or part thereof if any violation continues shall constitute a separate offense.

**Section 6. Manner of Enforcement.**

Violations of this Article shall be prosecuted in the same manner as other violations of the Town By-Laws provided, however, that in the event of an initial violation of the provision of this Article, a written notice shall be given the violator requiring the cessation of the activity. No complaint or further action shall be taken in the event the cause of the violation has been removed, the condition abated or fully corrected upon the receipt of such notice.

In the event the violator cannot be located in order to serve the notice, the notice as required herein shall be deemed to be given upon mailing such notice by registered or certified mail to the violator at his last known address or at the place where the violation occurred. At the discretion of the Town Manager subject to the approval of the Board of Selectmen, repetition of the same offense may result in the immediate filing of a complaint and/or action in a court of competent jurisdiction to cease and desist same.

**Section 7. Conflict with other Regulations.**

The provision(s) of this Article or the application of such provision(s) to any person or circumstances shall be held invalid, the validity of the remainder of this Article and applicability of such provisions to other persons or circumstances shall not be affected thereby.

*And by adding the following line*

*“Title V, Article 12 (Noise Abatement)”*

*to Title IX, Article 2 (Non-Criminal Disposition of Bylaws)*

*immediately after the line which says*

*“Title V, Article 9 (Dumpster Placement)”*

**(5-0)**

**COMMENT:** The Board supports the Noise Abatement Committee in its efforts to control excessive noise in the Town. However, it does not agree with the Committee that construction operations should be delayed past 7:00 a.m. during weekdays or 8:00

a.m. on Saturdays, Sundays and holidays. The Inspector of Buildings has indicated that the industry wide standard for construction is the 7:00 a.m. and 8:00 a.m. times for weekdays and weekends respectively. In addition, the Permanent Town Building Committee opposes any later starting times since it fears that the cost of town building projects including schools might increase due to the delayed start.

The current Article 12 provides as follows:

**Section 1. Declaration of Policy.**

No person shall operate any heavy equipment or construction equipment between the hours of 8:00 P.M. and 7:00 A.M. Monday through Friday and between the hours of 8:00 P.M. and 8:00 A.M. on weekends except as permitted in emergency situations as determined by the Town Manager after consultation with the Director of Public Works, the Director of Police Services or other Town officials as appropriate. Notwithstanding the foregoing, it shall not be a violation of this bylaw for such equipment to be driven within the confines of the Town.

**Section 2. Definition.**

*Heavy equipment* shall mean commercial or industrial equipment such as motorized earth moving equipment, jack hammers, pile drivers, trucks for loading and unloading dumpsters, tractor-trailers, and parking lot maintenance equipment, excluding emergency snow plowing.

**Section 3. Violations.**

Any person violating any provision of this Article shall be subject to a fine not exceeding \$200.00 for each offense and/or an action in the superior court, seeking an order to cease and desist such activity. Each day or part thereof if any violation continues shall constitute a separate offense.

**Section 4. Manner of Enforcement.**

Violations of this Article shall be prosecuted in the same manner as other violations of the Town By-Laws provided, however, that in the event of an initial violation of the provision of this Article, a written notice shall be given the violator requiring the cessation of the activity.

No complaint or further action shall be taken in the event the cause of the violation has been removed, the condition abated or fully corrected upon the receipt of such notice.

In the event the violator cannot be located in order to serve the notice, the notice as required herein shall be deemed to be given upon mailing such notice by registered or certified mail to the violator at his last known address or at the place where the violation occurred. Subsequent violations of the same offense shall result in the immediate filing of a complaint and/or action in the Superior Court to cease and desist.

To see if the Town will vote to amend the Bylaws to require that the owner of any improved property in the Town who plans to demolish any structure thereon to give notice to all abutters of such property, determine the nature and timing of such notice, or take any action related thereto.

**VOTED:** That the Bylaws be and hereby are amended by adding a new Article 7 to Title VI Building Regulations to provide as follows:

**(5-0)**

To see if the Town will vote, pursuant to the provisions of Chapter 40, Section 21, Clauses 23 and 24, to amend Article 5 Handicapped Parking of Title VIII Public Health and Safety of the Town Bylaws, to empower the police to enter onto private property on which the public has a right of access as invitees and/or licensees to enforce handicapped parking violations, or take any action related thereto.

**VOTED:** That, pursuant to the provisions of MGL c. 40, Section 21, Clauses 23 and 24, the Bylaws of the Town be and hereby are amended by adding a new Article 13 “Handicap Parking” to Title V Regulations upon the Use of Private Property to provide as follows:

**Article 13. HANDICAP PARKING**

**“Police are authorized to enter on to private property on which the public has a right of access as invitees and/or licensees to enforce handicap and disabled veterans parking violations as if same had occurred on public ways. The penalty for leaving of vehicles unattended within parking spaces designated as reserved for vehicles owned and operated by disabled veterans or handicapped persons shall be twenty-five dollars for the first offense and for any second or subsequent offense fifty dollars. The police may cause such vehicles to be towed at the owner’s expense in accordance with applicable state law.”**

**(5-0)**

**COMMENT:** This article was submitted at the request of the Chief of Police and the Disabilities Commission of the Town. This would authorize the police to ticket violators of marked handicap spaces in areas open to the public, such as Walgreen’s, CVS, and Stop & Shop. The need for such enforcement is self-evident in that without such enforcement handicapped individuals are seriously inconvenienced when they cannot gain access to these spaces.

**ARTICLE 22**

**BYLAW AMENDMENT/NEWS RACKS**

To see if the Town will vote to amend Article 1, Section 31 of Title III of the bylaws, to provide for a pilot program that would require newspaper vendors to locate their news racks inside of special containers called “condos or corrals” in certain areas of the Town, the cost of which would be amortized by the establishment of a fee to be paid by the vendors, to determine the amount of such fees, to appropriate a sum of money to fund the initial purchase, determine how the money will be raised and expended, or to take any action related thereto.

(Inserted at the request of the News Rack Study Committee)

**VOTED: The Board will report at Town Meeting under Article 22.**

**(5-0)**

**COMMENT:** The News Racks Committee has not yet finalized its recommendations. When it has done so and reported to the Board, the Board will have a recommended vote to be considered by Town Meeting.

**ARTICLE 23****ENLARGE PLEASANT STREET HISTORIC DISTRICT**

To see if the Town will vote to enlarge the Pleasant Street Historic District, established under Chapter 40C of the General Laws by the vote under Article 32 of the 1988 Annual Town Meeting (By-Laws, Title VII, Article 1, Section 4) by adding thereto the land and buildings now known as and numbered 5-7, 9, 11, 13, 19, 20, 22, 23, 24, 26, 26A, 28, 29, 32, 33, 34, 35, 36, 38, 41, 42, 44, 48, 49, 50, 51, 53, 54, & 55 Academy Street, 17 Irving Street, 14, 16, 19, 20, 21, 23, 24, & 28 Maple Street, 734-36 Massachusetts Avenue, and 67 Pleasant Street, said properties being bounded and described as follows:

Starting at a beginning point on the northwesterly sideline of Academy Street 91.53 feet from the easterly sideline of Irving Street, thence going northwesterly a distance of 186.20 feet to a point, thence going northeasterly a distance of 115.70 feet to a point, thence going southeasterly a distance of 19.08 feet to a point, thence going northeasterly a distance of 114.78 feet to a point, thence going southeasterly a distance of 100.00 feet to a point, thence going northeasterly a distance of 191.80 feet to a point, thence going southeasterly a distance of 15.00 feet to a point, thence going northeasterly a distance of 860.24 feet to a point, thence going easterly a distance of 12.00 feet to a point, thence going northeasterly a distance of 98.55 feet to a point, thence going southeasterly a distance of 77.00 feet to a point (being the southerly sideline of Massachusetts Avenue), thence going southwesterly a distance of 231.00 feet to a point, thence going southerly a distance of 45.00 feet to a point, thence going southeasterly a distance of 372.15 feet to a point, thence going southwesterly a distance of 135.00 feet to a point, thence going southeasterly a distance of 18.95 feet to a point, thence going southwesterly a distance of 106.00 feet to a point, thence going southeasterly a distance of 20.00 feet to a point, thence going northeasterly a distance of 106.00 feet to a point, thence going southeasterly a distance of 316.40 feet to a point on the northwesterly sideline of Pleasant Street, thence going southwesterly a distance of 165.83 feet to a point, thence going northwesterly a distance of 204.50 feet to a point, thence going southwesterly a distance of 145.42 feet to a point, thence going northerly a distance of 64.60 feet to a point, thence going southwesterly a distance of 84.12 feet to a point, thence going northwesterly a distance of 259.75 feet to a point, thence going southwesterly a distance of 48.35 feet to a point, thence going northerly a distance of 140.25 feet to a point, thence going southwesterly a distance of 20.75 feet to a point, thence going southerly a distance of 83.68 feet to a point, thence going southwesterly a distance of 74.24 feet to a point, thence going southeasterly a distance of 10.00 feet to a point, thence going southwesterly a distance of 60.00 feet to a point (the previous 13 bounds being boundaries of the pre-existing Pleasant Street Historic District) thence going northwesterly a distance of 69.30 feet to a point, thence going southwesterly a distance of 63.10 feet to a point, thence going southeasterly a distance of 25.00 feet to a point, thence going southwesterly a distance of 68.65 feet to a point, thence going southeasterly a distance of 110.00 feet to a point, thence going westerly a distance of 49.83 feet to a point, thence going southwesterly a distance of 78.05 feet to a point, thence going northerly a distance of 16.00 feet to a point, thence going westerly a distance of 100.88 feet to a point, thence going southerly a distance of 112.00 feet to a point, thence going westerly a distance of 46.69 feet to a point, thence going southwesterly a distance of 292.66 feet to a point, thence going northwesterly along a

curve (being the westerly sideline of Irving Street) a distance of 323.76 feet to a point, thence going northeasterly a distance of 131.53 feet to the point of beginning. All of said dimensions being more or less, or however said area may be otherwise bounded and described. Shown on a plan entitled "Academy and Maple Street Expansion of the Pleasant Street Historic District, Arlington-Mass January 2005" by Ronald Santosuosso, Town Engineer, dated 1/14/05

and to amend the By-Laws accordingly, or take any action related thereto.

(Inserted at the request of the Arlington Historic District Commissions)

**VOTED: That the Board of Selectmen supports the vote of the Historic Districts Commission in their printed report to Town Meeting.** (5-0)

**COMMENT:** The Board supports the recommended vote of the Historic Districts Commission that the Pleasant Street Historic District should be enlarged to include properties bordered by Irving Street, Academy Street, Massachusetts Avenue, and Pleasant Street with the proposed exceptions of the Town Hall and the Robbins Memorial Library. The Board notes that residents of the proposed enlarged district have petitioned for such inclusion.

**ARTICLE 24 HOME RULE LEGISLATION AMEND TOWN  
MANAGER ACT/FINANCE COMMITTEE MEMBERSHIP**

To see if the Town will vote to file special legislation to amend the Town Manager Act and/or amend the Town Bylaws to provide for appointment of members to the Finance Committee so as to permit appointment of members at large, or from adjoining precincts, when no candidates can be found by the appointing authority willing to serve and represent a particular precinct, or take any action related thereto.

(Inserted at the request of the Chairman of the Finance Committee)

**VOTED: That the Town does hereby authorize and request that the Board of Selectmen file with the Legislature a Home-Rule Petition to provide substantially as follows:**

**"AN ACT FURTHER AMENDING AN ACT ESTABLISHING  
A TOWN MANAGER ACT FOR THE TOWN OF ARLINGTON  
IN REGARD TO THE APPOINTMENT OF FINANCE  
COMMITTEE MEMBERS."**

**"Section 1. Members**

**Chapter 503 of the Acts of 1952 An Act Establishing A Town  
Manager Act for the Town of Arlington, be and hereby is  
further amended by adding the following sentence after the  
second sentence of Section 33 "Appointment of Finance  
Committee":**

**‘In the event that the appointing committee is unable to secure an appropriate candidate from each precinct of the Town, then the committee may appoint a member preferably from an adjacent precinct or a member-at-large to serve in lieu thereof. Notwithstanding the foregoing, no precinct shall have more than two members nor shall there be more than three at-large members at any given time.’**

**Section 2.**

**This Act will take effect upon passage.”**

**(5-0)**

**COMMENT:** This article was inserted at the request of the Chair of the Finance Committee who, with other members of the Appointing Committee of the Finance Committee, the Moderator, and the Chair of the Board of Trustees Fund Commissioners, is concerned about the difficulty that frequently arises in seeking qualified candidates for appointment from each precinct of the Town as is currently required. Passage of this Home-Rule Legislation would obviate such concern. The Chair of the Finance Committee or other member of the Appointing Committee will speak to this matter further.

**ARTICLE 25**

**HOME RULE PETITION/TIMOTHY PACHECO**

To see if the Town will vote to request and authorize the Board of Selectmen to file a Home-Rule Petition with the General Court so as to permit Timothy Pacheco of 15 Fordham Street, Arlington, to apply for the position of Firefighter in the Town’s Fire Department notwithstanding the fact that the Town has not accepted the provisions of Sections 61A and 61B of Chapter 31 of the General Laws and further notwithstanding the fact that Mr. Pacheco’s age is in excess of 32 years, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 25 of the Warrant.**

**(5-0)**

**COMMENT:** This 10 registered voters article was submitted into this year’s Warrant when it was unclear whether the Legislature would act on an identical the Home-Rule Petition that was passed by last year’s Town Meeting. Since the closing of the Warrant the Legislature has passed that legislation, thus rendering this article moot.

## **ARTICLE 26**

## **HOME RULE LEGISLATION/BOARD OF SURVEY**

To see if the Town will vote to request the Board of Selectmen to file Home Rule Legislation with the General Court, substantially as follows:

### **An Act Amending Chapter 249 of the Acts of 1897, Establishing a Board of Survey for the Town of Arlington.**

Section 1. New sections are hereby added to said Act, as follows:

Section 8. Whenever a public hearing is required as hereinabove set forth, in addition to giving notice by publication, the board shall give two weeks' written notice to all property owners whose properties lies within 300 feet of any boundary of the land upon which any street or way is proposed to be located, and, in addition, if the land is open space, to the Arlington Conservation Commission, if the land contains a building on the Town's Inventory of Historically and Architecturally Significant structures, to the Arlington Historical Commission, and if the land is within an Historic District, to the Historic District Commission having jurisdiction thereof.

Section 9. Before approving the layout of any such street or way, the board shall make a finding that the same is consistent with the public convenience and necessity, and in addition, shall not approve the layout until the petitioner has first obtained from any board or commission of the Town any permits or approvals required by any other statute or by any Bylaw of the Town.

Section 2. This act shall take effect upon its passage.

Or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 26 of the Warrant.**

**(5-0)**

**COMMENT:** The Board opposes any affirmative action under this article. By way of background, the Board of Selectmen in the Town acts as its Board of Survey. The Board of Survey in the Town was established in 1897 by Special Act of the Legislature. The Special Act determined that whenever a proposed new private way was to be built in the Town it would have to conform to certain requirements of the Board of Survey, but the inquiry of the Board is limited to determining the location of the way, its width and grade. This Special Act, although over 100 years old, is not substantially different than its cognate provision of the General Laws that outlines the duties of the Boards of Survey in other municipalities.

The Board of Survey in the Town has already amended its Rules and Regulations to reflect the notice provisions as suggested by this Warrant article, thus rendering that portion of the article moot. The Board strongly opposes the rest of the article in that it would put the Board into the business of land-use planning, which is the proper purview

of the Zoning Board of Appeals, the Redevelopment Board, and the Town Meeting when the latter makes changes to the Town's Zoning Bylaws. To expand the duties of the Town's Board of Survey to approve developments would greatly expand the scope of inquiry of the Board. The Board believes that this very sensitive subject should be free of any potential political influences and is more properly in the hands of appointed officials who have been appointed to such positions based on their professional expertise.

In addition, the standard by which the Board of Survey would be required to review any developments is irrationally high. In order to approve a development the Board would have to make a finding that “same is consistent with the public convenience and necessity.” Otherwise stated, the Board would have to determine that the project is a necessity. It is unlikely that the Board could ever approve such a project based upon that criteria. Both Federal and State constitutional law prohibit any governmental authority from taking any official act which eliminates all economic benefit of the owner of a given piece of property. It is true that a development that proposes several structures would not lead to such a taking since the Board could presumably reduce the number of structures, thus leaving the owner with some economic benefit. One can nonetheless posit a situation where only one structure was proposed. Unless the Board can find that the one structure development is consistent with public necessity, then any denial would leave that property essentially useless, thus giving rise to litigation alleging a regulatory taking and a civil rights violation.

There is available another legal recourse for regulating development in the Town. A simple vote of the Town to accept the Subdivision Control Law would accomplish the goals of the proponents. See Sections 81B through 81GG of Chapter 41 of the General Laws. This law, adopted in many other communities but not in effect in the Town, would permit the Redevelopment Board as the Town's Planning Board to approve or disapprove proposed developments. This is the legal remedy that would best address how to control and regulate development projects. Subdivision Control requires the holding of hearings and the submission of plans addressing a wide range of subjects which can include effects upon the neighborhood, traffic, and other areas of concern not available under the proposed amendment law of this article.

Although the Board shares the concerns of the proponents of the proliferation of potential overdevelopment of the Town, it believes that this proposal is not the most appropriate legal vehicle to address these concerns and has the potential to expose the Town to expensive litigation. A no-action vote is strongly urged.

**ARTICLE 27** **HOME RULE LEGISLATION/TAX EXEMPTIONS**  
**FOR ELDERLY**

To see if the Town will vote to file for special legislation which will permit the Assessors to grant increased tax exemptions for elderly residents of the Town, or take any action related thereto.

(Inserted by the Board of Selectmen)

**VOTED:** That, pursuant to the provisions of Section 51 of Chapter 184 of the Acts of 2002, the Town hereby increases and adjusts the income limits, asset limits and exemption amount provided under Clause 41C of Section 5 of Chapter 59 of the General Laws as follows:

**(a) Income limit --- increase from \$13,000 for a single person to \$20,000. Increase from \$15,000 to \$30,000 for a married couple.**

**(b) Asset limits increase from \$28,000 for a single person to \$40,000. Increase from \$30,000 to \$55,000 for a married couple.**

**(c) Increase exemption amounts from \$500 to \$1,000.**

**Same to be effective for the tax year 2006. (July 1, 2005)**

**(5-0)**

**COMMENT:** General Laws Chapter 59, Section 5 (41C) deals with elderly exemptions for property tax purposes. The provision permits a \$500 exemption for seniors 70 years of age or older who own and occupy their domicile and meet certain income and asset limits. Under this provision a single senior qualifies if his or her income is \$13,000 or less. The income limit for married individuals is \$15,000. Single seniors cannot have assets above \$28,000 and the married maximum cannot exceed \$30,000 (excluding the home). Chapter 184 of the Acts of 2002 permits municipalities to increase the single senior asset limitation to \$40,000 and married seniors to \$55,000 and increase the income limit from \$13,000 for singles to \$20,000 and married couples from \$15,000 to \$30,000. The current exemption of \$500 can be increased to as much as \$1,000.

There are currently 139 seniors in the past year who qualify and have applied for this exemption in the Town. Therefore, there is a loss to the Town of \$69,500, but this amount is reimbursed by the state each year. Any increase in the amount of the exemption would not be reimbursable from the state but would come from ample funds in the overlay reserve. Although it is difficult to determine precisely how much of a charge to the reserve there would be, it is estimated that an additional charge of \$100,000 would be made to fund this larger exemption from the overlay account. The purpose of this increase is to attempt to cushion the impact of the increased taxes to seniors on a fixed income that would result from a successful override or other tax increases.

## **ARTICLE 28 HOME RULE PETITION LEGISLATION/SYMMES SITE**

To see if the Town will vote to authorize and request the Board of Selectmen to file home rule legislation that would authorize the creation of a special account into which all revenue generated by the Town from the Symmes project, including without limitation, tax revenues from the site, would be placed and further said legislation would authorize payment without further appropriation from the account to retire bonded indebtedness or other expenses related to the acquisition, maintenance and operation by the Town of the site, or take any action related thereto.

(Inserted at the request of the Symmes Advisory Committee)

**VOTED: That no action be taken under Article 28 of the Warrant.**

(5-0)

**COMMENT:** This matter will be dealt with under Article 4 of the April 27 Special Town Meeting.

**ARTICLE 29**

**HOME RULE LEGISLATION/CHAPTER 31  
GENERAL LAWS**

To see if the Town will vote to file home rule legislation which will have the effect of removing all school-side secretarial staff from the provisions of Chapter 31 of the General Laws, the so-called Civil Service Law, or take any action related thereto.

(Inserted at the request of the Superintendent of Schools).

**VOTED:** That the Board of Selectmen be and hereby authorized to file the following Home-Rule Legislation substantially as follows:

**“AN ACT TO REMOVE ALL SECRETARIAL STAFF  
IN THE SCHOOL SYSTEM OF THE TOWN OF  
ARLINGTON FROM THE PROVISIONS OF CHAPTER  
31 OF THE GENERAL LAWS, THE CIVIL SERVICE  
LAW.**

**Section 1.**

**Notwithstanding any General Law or special act to the contrary including without limitation the provisions of Chapter 31 of the General Laws all secretarial and clerical staff in the public schools in the Town of Arlington shall not be subject to the provisions of said Chapter.**

**Section 2.**

**This Act shall take effect upon passage.”**

(4-1)

**Mrs. Mahon voted in the negative**

**COMMENT:** This article was submitted at the request of the Superintendent of Schools. The Board agrees with the Superintendent that the state Civil Service Law as applicable to Town employees is antiquated and very inefficient. Ordinarily, Town positions are filled off of lists generated by the state’s Human Resources Division after the taking of tests related to qualifications for each position. There has not been a test for secretarial or clerical staff for years nor are there any existing lists from which appointments can be made. Therefore, many clerical and secretarial staff are serving in a provisional capacity which makes the determination of seniority a difficult matter to settle. Removing these positions from Civil Service will not reduce the protections afforded this staff since their Union membership will continue. All collective bargaining agreements contain grievance procedures which permit any disciplined or discharged employee an appeal process which leads ultimately to binding arbitration. The Superintendent reports that the staff in question strongly supports this measure.

## **ARTICLE 30**

## **REVOLVING FUNDS**

To see if the Town will vote the following:

- A. Private Way Repair - to reauthorize the revolving fund established under Article 46 of the 1992 Annual Town Meeting relating to defraying the cost of private way repairs; to hear or receive a report concerning the receipts and expenditures of same;
- B. Public Way Repair - to reauthorize the revolving fund established under Article 45 of the 1992 Annual Town Meeting relating to the maintenance of public ways; to hear or receive a report concerning the receipts and expenditures of same;
- C. Fox Library - to reauthorize the revolving fund established under Article 49 of the 1996 Annual Town Meeting relating to the Fox Library and Community Center; to hear or receive a report concerning the receipts and expenditures of same;
- D. Robbins House - to reauthorize the revolving fund established under Article 77 of the 1997 Annual Town Meeting relating to the Whittemore-Robbins House; to hear or receive a report concerning the receipts and expenditures of same;
- E. Conservation Commission - to reauthorize the revolving fund established under Article 44 of the 1996 Annual Town Meeting relating to consultant fees charged by the Conservation Commission; to hear or receive a report concerning the receipts and expenditures of same;
- F. Tuition Payments – to reauthorize the revolving fund established under Article 34 of the 1999 Annual Town Meeting relating to grants or reimbursements paid by another governmental entity including tuition payments of U.S. citizen students; to hear or receive a report concerning the receipts and expenditures of same;
- G. All Day Kindergarten - to reauthorize the revolving fund established under Article 31 of the 2000 Annual Town Meeting for all day kindergarten under the auspices of the School Department; to hear or receive a report concerning the receipts and expenditures of same;
- H. Uncle Sam – to reauthorize the revolving fund established under Article 31 of the 2000 Annual Town Meeting for the Uncle Sam program that promotes Arlington as the “Birthplace of Uncle Sam” under the auspices of the Uncle Sam Committee; to hear or receive a report concerning the receipts and expenditures of same;
- I. Hardy After School Program – to reauthorize the revolving fund established under Article 51 of the 2001 Annual Town Meeting for the after school program at the Hardy School; to hear or receive a report concerning the receipts and expenditures of same;
- J. Life Support Services – to reauthorize the revolving fund established under Article 6 of the May, 2001 Special Town Meeting for basic life support and advanced life support services which provides for billing and payment to other entities in the Town to take account of new Medicare regulations; to hear or receive a report concerning the receipts and expenditures of same;
- K. Building User Fees – to reauthorize the revolving fund established under Article 27 of the 1992 Annual Town Meeting to defray the expenses of conducting after hours activities in the schools by outside groups, to hear or receive a report concerning the receipts and expenditures of same;

To appropriate a sum of money for any one or all of the same; to establish new revolving funds; to determine how the money shall be raised and expended; or take any action related thereto.

(Inserted by the Board of Selectmen)

**VOTED: That the Town does hereby vote to renew the following listed revolving funds and to receive the reports on revenues, expenditures and balances on each.**

**(5-0)**

A. Private Way Repair – to reauthorize the revolving fund as established under Article 46 of the 1992 Annual Town Meeting and expenditures not to exceed \$200,000.

Beginning Balance: \$33,489.00  
Receipts: \$27,092.76  
Expenditures: \$ 0.00  
Ending Balance: \$60,581.76

B. Public Way Repair – to reauthorize the revolving fund established under Article 45 of the 1992 Annual Town Meeting and expenditures not to exceed \$50,000.

Beginning Balance: \$ 1,098.75  
Receipts: \$ 0.00  
Expenditures: 0.00  
Ending Balance: \$ 1,098.75

C. Fox Library – to reauthorize the revolving fund established under Article 49 of the 1996 Annual Town Meeting relating to receipts received at the Fox Library/Community Center and expenditures not to exceed \$20,000.

Beginning Balance: \$ 3,558.55  
Receipts \$ 5,509.59  
Expenditures: \$10,019.01  
Ending Balance: \$ <950.87>

D. Robbins House – to reauthorize the revolving fund authorized under Article 77 of the 1997 Annual Town Meeting and expenditures not to exceed \$75,000.

Beginning Balance: \$ 6,522.15  
Receipts: \$26,190.00  
Expenditures: \$26,562.39  
Ending Balance: \$ 6,149.76

E. Conservation Commission – to reauthorize the revolving fund established under Article 44 of the 1996 Annual Town Meeting relating to consultant fees charged by the Conservation Commission and expenditures not to exceed \$50,000.

Beginning Balance: \$ 2,106.07  
Receipts: \$ 0.00  
Expenditures \$ 0.00  
Ending Balance: \$ 2,106.07

F. Tuition Payments – to reauthorize the revolving fund established under Article 34 of the 1999 Annual Town Meeting relating to the receipts including grants and reimbursements paid any governmental entity for tuition payments for non-U.S. citizen students with expenditures not to exceed \$20,000.

Beginning Balance:	\$143,042.27
Receipts:	\$ 5,366.66
Expenditures:	\$ 0.00
Ending Balance:	\$148,408.93

G. All Day Kindergarten – to reauthorize the revolving fund established under Article 31 of the 2000 Annual Town Meeting for all day kindergarten under the auspices of the School Department with expenditures not to exceed \$400,000.

Beginning Balance:	\$179,949.95
Receipts:	\$390,151.70
Expenditures:	\$198,467.10
Ending Balance:	\$371,634.55

H. Uncle Sam – to reauthorize the revolving fund established under Article 31 of the 2000 Annual Town Meeting for the Uncle Sam program that promotes Arlington as the “Birthplace of Uncle Sam” under the auspices of the Uncle Sam Committee with expenditures not to exceed \$2,000.

Beginning Balance:	\$ 1,147.80
Receipts:	\$ 0.00
Expenditures:	\$ 0.00
Ending Balance:	\$ 1,147.80

I. Hardy School Program – to reauthorize the revolving fund established under Article 51 of the 2001 Annual Town Meeting for the after school program at the Hardy School with expenditures not to exceed \$225,000.

Beginning Balance:	\$ 118,851.61
Receipts:	\$ 113,663.47
Expenditures:	\$ 111,282.82
Ending Balance:	\$ 121,232.26

J. Life Support Services – to reauthorize the revolving fund established under Article 37 of the 2001 Annual Town Meeting for emergency medical services with expenditures not to exceed \$400,000.

Beginning Balance	\$194,252.53
Receipts:	\$ 80,874.00
Expenditures:	\$ 57,385.72
Ending Balance:	\$217,740.81

K. Building User Fees – to reauthorize the revolving fund established under Article 27 of the 1992 Annual Town Meeting to defray the expenses of conducting after hours activities in the schools by outside groups with expenditures not to exceed \$80,000.

Beginning Balance	\$205,217.20
Receipts:	\$ 77,874.68
Expenditures:	\$ 39,239.88
Ending Balance:	\$ 243,852.00

L. Board of Health Fees – to authorize a revolving fund to accept permit fees, reinspection fees, seminar fees, and fines to be utilized to fund these programs for the Board of Health with expenditures not to exceed \$25,000.

**COMMENT:** This is the usual housekeeping article that permits the Town to continue its various revolving funds. Revolving funds permit the funding of various activities through fees and charges that fund each activity without having to appropriate money therefor.

### **ARTICLE 31 REVOLVING FUND/PARKING PROGRAM**

To see if the Town will vote to establish a revolving fund pursuant to the provisions of Massachusetts General Laws Chapter 44, Section 53E1/2 for the purpose of making expenditures relating to the Town's Parking/Parking Ticket Program, including the payment of all expenses relating to said program including the maintenance/replacement of parking signs and the painting/repainting of handicap areas and other parking zones where appropriate; or take any action related thereto.

(Inserted at the request of the Town Treasurer/Parking Clerk)

**VOTED: That no action be taken under Article 31 of the Warrant.**

**(5-0)**

**COMMENT:** This article was inserted at the request of the Town Parking Clerk, Mr. Bilafer. It arose out of his concern about his having to forgive certain parking tickets due to what he perceived to be inadequate street markings and signs related to the regulation of parking. However, since the inclusion of this article in the Warrant an arrangement has been made satisfactory to Mr. Bilafer with the Director of Public Works, John Sanchez to address this problem. Mr. Bilafer, therefore, supports this no action vote.

### **ARTICLE 32 REVOLVING FUND/CONSERVATION COMMISSION**

To see if the Town will vote to establish, pursuant to Section 53E 1/2 of Chapter 44 of the General Laws, a revolving fund for the Conservation Commission and to transfer any funds currently available to the Conservation Commission into such funds, or take any action related thereto.

(Inserted at the request of the Conservation Commission)

**VOTED: That no action be taken under Article 32 of the Warrant.**

**(5-0)**

**COMMENT:** The appropriate Town officials have met and determined that under existing State Department of Revenue guidelines there is no need to establish a revolving fund for the Conservation Commission. Any fees received by the Commission go into an account which can be expended with the written permission of the Town Manager. The money appropriated in the Conservation Commission budget is offset by these receipts which go primarily to pay the salary of the Administrator of the Commission.

**ARTICLE 33 ENDORSEMENT OF CDBG APPLICATION**

To see if the Town will vote to endorse the application for Federal Fiscal Year 2006 prepared by the Town Manager and the Board of Selectmen under the Housing and Community Development Act of 1974 (PL 93-383) as amended, or take any action related thereto.

(Inserted by the Board of Selectmen and at the request of the Town Manager)

**VOTED: That the Town hereby endorses the application for Federal Fiscal Year 2006 prepared by the Town Manager and the Board of Selectmen under the Housing and Community Development Act of 1974 (Public Law 93-383) as amended.**

**(5-0)**

**COMMENT:** The Director of Planning, on behalf of the Board of Selectmen and the Manager, will present and seek endorsement of the Town Meeting of the Town's application for expenditures of CDBG funds for the upcoming fiscal year.

**ARTICLE 34 AUTHORITY TO FILE FOR GRANTS**

To see if the Town will vote to give the Town Manager, the Board of Selectmen, the Superintendent of Schools, and the School Committee, the general authority to file applications and to accept grants from the Federal Government, the Commonwealth of Massachusetts and/or any grant-making organization/body during Fiscal Year 2006, or take any action related thereto.

(Inserted at the request of the Town Manager and Superintendent of Schools)

**VOTED: That the Board of Selectmen, Town Manager, the School Superintendent and the School Committee are granted the general authority to file applications and to accept grants from the federal government, the Commonwealth of Massachusetts and/or any grant making organization during fiscal year 2005.**

**(5-0)**

**COMMENT:** This is the usual housekeeping article that places the Town Meeting on record as authorizing Town officials to apply for and accept grants.

**ARTICLE 35                    ESTABLISH COMMITTEE/PRIVATE WAY PROCEDURES**

To see if the Town will vote to establish a Private Way Procedures Committee to explore various alternatives to the financing of the repair/reconstruction of the town's private ways, and set forth written procedures regarding the said private way program including the establishment and recording of betterment liens against the properties and property owners benefited by any improvements; said committee to be comprised of one member of the Board of Selectmen appointed by the Board; the Town Counsel; the Director of Public Works; the Director of Assessments and the Town Treasurer; the organizational meeting of the committee to be called and presided over by the Selectman member, and the business of the committee will be conducted so long as a quorum of the members are present at the organizational and subsequent meetings of the committee; to appropriate monies to initially fund private way repairs to determine how the money will be raised and expended including the possibility of borrowing same, or take any action related thereto.

(Inserted at the request of the Town Treasurer)

**VOTED:            That the Board will report to Town Meeting under Article 35.**

**(5-0)**

**COMMENT:**            The Private Ways Committee has not yet finalized their recommendation for proposed action under this article. When it has done so the Board will recommend a vote to the Town Meeting.

**ARTICLE 36                    ESTABLISH COMMITTEE/  
REVISING THE TOWN'S FISCAL ORGANIZATION**

To see if the Town will vote to establish a committee to study the consolidation of the fiscal organization of the Town under a Chief Financial Officer reporting to the Town. Said committee shall consist of the Town Treasurer or his appointee, the Town Manager or his appointee, the Director of Assessments or his appointee, the Chair of the Finance Committee or his appointee, a Town Meeting Member, a Vision 2020 member and a resident of the Town, the last three to be appointed by the Moderator. Said committee shall make recommendations to the Board of Selectmen by December 2005 and shall report to the next Annual Town Meeting. The recommendation shall include a specific consolidated organization, evaluation of its advantages and disadvantages, and details of the changes needed in the bylaws and Town Manager Act, estimate cost savings/additional expenses and suggest an implementation procedure or take any action relating thereto.

(Inserted at the request of Vision 2020 Fiscal Resources Task Group)

**VOTED:            That no action be taken under Article 36 of the Warrant.**

**(5-0)**

**COMMENT:**            This article was submitted at the behest of the Vision 20/20 Fiscal Resources Task Group. It proposes the establishment of a committee to study and make recommendations on the potential consolidation of certain of the Town's finance-related

departments into one Finance Department. The Board strongly endorses the concept of such a study. However, it prefers that this matter be handled pursuant to a previous vote of the Budget and Revenue Task Force. The wording of the article suggests that the committee be charged with the responsibility of making a recommendation for a specific consolidation. The Board believes that the vote of the Budget and Revenue Task Force is somewhat more open-ended since it does not assume that such a recommendation for a consolidation would be necessarily made. The Board believes that the Budget and Revenue Task Force's vote represents a more open-minded approach in recognizing that such a reorganization may not necessarily be appropriate. There are certain advantages to checks and balances and direct responsibility to the voters that is implicit in having an elected Treasurer and Board of Assessors. The article also does not include a representative of the School Committee who may be impacted by any reorganization. The Board recognizes that there naturally will be some potential misgivings regarding this matter on the part of elected Town officials in any such review. It believes that a more gentle approach would be to follow the Budget and Revenue Task Force vehicle rather than a more formal Town Meeting vote.

**ARTICLE 37                      ESTABLISH COMMITTEE/SYMMES NEIGHBORHOOD**

To see if the Town will vote to develop a comprehensive post development mitigation plan for the greater Symmes neighborhood and that the Town Meeting establish a committee and planning process for the establishment of said plan, or take any action related thereto.

(Inserted by the Board of Selectmen)

**VOTED:      That the Town does hereby establish a committee to be called the Symmes Project Post Development Impact Committee whose charge it will be to assess the impacts on the greater Symmes neighborhood and the Town that result from the completion of the Symmes project to include but not necessarily be limited to post development engineering, transportation, public works, public safety, public health and school related issues. Said committee shall develop mitigation plans with clear timelines and operating and capital budget requirements and other recommendations for the consideration of future Town Meetings. It will report on its work to the Board of Selectmen, School Committee, Town Manager, Superintendent of Schools and Finance Committee on a periodic basis.**

**There shall be seven members, two members of the Symmes Neighborhood Advisory Committee or said Committee's designees as determined by said committee's membership, the Town Manager or his designee, the Director of Planning or his designee, the Director of Public Works or his designee, a member of the Transportation Advisory Committee designated by said committee's membership and a member of the Board of Selectmen or said Board's designee.**

**(5-0)**

**COMMENT:** As part of its review and favorable recommendation to the last Town Meeting dealing with the Symmes Project the Board of Selectmen represented that it could seek the establishment of a Committee to assess the long range impact of the project on the immediate neighborhood and town services as a whole. The Board believes that this should be seen as complimentary to the Symmes Neighborhood Advisory Committee whose charge is to recommend mitigating measures only during the construction project and only as it relates to the immediate neighborhood. This new proposed committee's charge would be more global in scope and would look to assess the impact of the project on the Town as a whole as well as report on the mitigation actions identified during the redevelopment and construction of the site. Favorable action is recommended.

**ARTICLE 38 FIRE STATION RENOVATION POSTPONEMENT**

To see if the Town will vote to postpone the rebuilding of Park Circle Fire Station until a formal evaluation of actual response times for fire and emergency medical vehicles over the past three years is submitted to Town Meeting. Such submission shall be no later than the next annual town meeting, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 38 of the Warrant.**

**(5-0)**

**COMMENT:** The Board strongly believes that the safety of the Town requires the maintenance of three fire stations. It believes that the renovation program should not be further delayed. Town Meeting previously voted to move forward with this project when it appropriated funds to prepare design plans for a new station. The Board urges a no action vote.

**ARTICLE 40 TRASH FEE**

To see if the Town will vote to institute a fee to offset all or part of the costs of trash and yard waste collections and disposal, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 40 of the Warrant.**

**(5-0)**

**COMMENT:** The Board strongly opposes the imposition of a trash collection fee in the Town. The Board believes that there is no beneficial environmental impact associated with such a fee which is not connected with any recycling effort. The pick up of trash in Town is one of the most visible of municipal services and the citizens of the Town have rightly considered such pick up as appropriately funded from the payment of taxes. The Board believes that the most appropriate vehicle for the enhancement of Town revenue is the override question to be voted on June 11, 2005. A no vote is strongly urged.

**ARTICLE 41****TRASH COLLECTION PLAN**

To see if the Town will vote to implement one of the trash collection options included in the PAYT Committee's report to the Board of Selectmen, making all necessary changes to its Bylaws required for the implementation of the PAYT plan selected, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That the Board of Selectmen will report to the Town Meeting under Article 41 of the Warrant.**

**(5-0)**

**COMMENT:** The Board supports the many environmental benefits that a Pay As You Throw Program would engender. However, it is mindful that it has some costs to the consumer associated with it. The Board's primary focus is on a successful override campaign. The Board will offer a particular motion when this article is reached in the Warrant.

**ARTICLE 53 ESTABLISH COMMITTEE/200<sup>TH</sup> ANNIVERSARY OF TOWN**

To see if the Town will vote to establish a committee to consider and possibly plan for an observance of the 200<sup>th</sup> anniversary of the incorporation of the Town in 1807; to determine the manner of appointment of such a committee; to make an appropriation for the expenses of such committee; or take any action related thereto.

(Inserted at the request of the Town Moderator)

**VOTED: That the Board supports the vote of the Finance Committee that recommends an appropriation for the expenses of a Committee to be established to consider and plan for the observance of the 200<sup>th</sup> anniversary of the incorporation of the Town in 1807.**

**(5-0)**

**ARTICLE 69****OVERRIDE RESOLUTION**

To see if the Town will vote to recommend and request that the Board of Selectmen place a general or "cafeteria style" override on the ballot, or take any action related thereto.

(Inserted at the request of 10 registered voters)

**VOTED: That no action be taken under Article 69 of the Warrant.**

**(5-0)**

**COMMENT:** This article has been rendered moot by the Board's vote to place an override question on the ballot on June 11, 2005. The Board, however, encourages the Moderator to get a sense of Town Meeting on the question of raising additional taxes in the amount of \$6,000,000 to fund the operating budgets of the Town and schools for fiscal year 2006.

## **ARTICLE 70**

### **RESOLUTION OF THE TOWN OF ARLINGTON CONCERNING THE MASSACHUSETTS NATIONAL GUARD AND THE WAR IN IRAQ**

**WHEREAS:** the Town and its citizens recognize the sacrifices that the men and women serving in the United States Armed Forces in Iraq are making.

**WHEREAS:** in October 2002 the United States Congress adopted a Joint Resolution to Authorize the use of United States Armed Forces Against Iraq, relying on statements that were untrue, when in fact

- the United States was not threatened with attack by Iraq,
- Saddam Hussein had no weapons of mass destruction,
- Saddam Hussein had no role in the 9/11 attacks.

**WHEREAS:** in going to war, the President did not meet the conditions imposed by Congress, failing to show Congress why he decided that diplomatic or peaceful means alone would not protect the national security of the United States or lead to enforcement of Security Council resolutions on Iraq, why he decided that going to war was a necessary action against Iraq on the theory – never proven – that Iraq authorized, committed, or aided in the 9/11 attacks.

**WHEREAS:** the war has resulted in serious and potentially long-lasting consequences for the United States and for the chances for a just and durable peace in Iraq and the Middle East;

**WHEREAS:** the United States Constitution provides that Congress shall have the power to “provide for calling forth the Militia to execute the Laws of the Union, to suppress insurrections and repel Invasions,” and the Massachusetts Constitution provides that no armies be maintained without the consent of the State Legislature;

**WHEREAS:** at least since 1986, the President and the Congress have had nearly total control over state militias, including the Massachusetts National Guard;

**WHEREAS:** the costs of the call-up of Massachusetts National Guard members for deployment in Iraq has been significant, as reckoned in lost lives, combat injuries, psychic trauma, disruption of family life, financial hardship for individuals, families, and businesses, interruption of careers, and damage to the fabric of civic life in many Massachusetts communities;

**WHEREAS:** these are costs which would be suffered willingly were there a threat to our nation, but which are not tolerable where there is none;

**WHEREAS:** Massachusetts’ residents have joined the Guard thinking that they would be serving their neighbors by helping with Massachusetts-based emergencies, unless there was a danger to America requiring transfer to active duty;

**WHEREAS:** stop-loss orders violate the mutual understanding between Massachusetts’

residents in the Guard and the state and nation they agreed to serve;

**WHEREAS:** there is reason to believe that the federalization and deployment of Massachusetts National Guard members has rendered the remaining Guard force unable to carry out its state activities effectively; and

**NOW, THEREFORE, IT IS HEREBY RESOLVED,** that the Town requests the members of Massachusetts' Congressional Delegation to urge Congress to restore the balance between the federal government and the states, limiting the nearly complete federal control over State National Guard units to cases where there is reasonable evidence that war powers are requested in order to protect against a threat to the territory of the United States, where there is an insurrection or a plausible threat of insurrection; or where there is a declaration of war under the United States Constitution;

**RESOLVED,** that the Town requests the General Court of the Commonwealth of Massachusetts, exercising its powers under Article XVII of the First Part of the Massachusetts' Constitution, to: investigate and discuss whether members of the Massachusetts' National Guard have been called to active service and assigned to duties relating to the war in Iraq in conformity with the U.S. Constitution and federal laws, including the 2002 Congressional Resolution on Iraq; and create a commission or other body to collect statutory, historical, and statistical information about the role of the National Guard in serving the State of Massachusetts and to study the impact of the federalization and deployment of its members on the ability of the Guard to perform its mission in Massachusetts;

**RESOLVED,** that the President and the Congress take steps to withdraw American troops from Iraq, consistent with the mandate of international humanitarian law; and

**RESOLVED,** that the Town Clerk send a copy of this Resolution to each member of the Massachusetts' Congressional Delegation, the Massachusetts Governor, the Speaker of the Massachusetts House of Representatives, the President of the Senate, and the Adjutant General of the National Guard of Massachusetts.

(Inserted at the request of 10 registered voters)

**VOTED: That the Board will report to Town Meeting under Article 70 of the Warrant.**

**(5-0)**

**COMMENT:** The Board recognizes some favorable aspects of the resolution but objects to others. It has directed the Town Counsel to discuss with the proponents some language that the Board could recommend under this article. Such discussions were ongoing at the time of the printing of this report. The Board will propose a vote when this article is reached.